IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

RCRev..No. 20 of 2004

RCA.185/2002 of RENT CONTROL APPELLATE AUTHORITY,ERNAKULAM
RCP.129/2001 of IRENT CONTROL COURT, ERNAKULAM

.....

REVISION PETITIONER/RESPONDENT/RESPONDENT:

E.S.JOSE, AGED 48 YEARS,
S/O. E.B.SOLOMON, A2Z SANITARY WARES,
JAISON BUILDING, P.T.USHA ROAD, KOCHI-11.

BY ADV. SRI.N.N.SUGUNAPALAN
SRI.K.VINOD CHANDRAN

RESPONDENT/APPELLANT/PETITIONER:

K.A.ANTONY, AGED 58 YEARS,
S/O. AUGUSTINE, KALLUVEETTIL HOUSE,
KADAMAKUDY P.O. ERNAKULAM.

BY ADV. SRI.R.D.SHENOY
SRI.S.VINOD BHAT
SRI.P.K.RAVISANKAR

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 19/06/2007 ALONG WITH RCR NO.21 OF 2004 AND CONNECTED CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

R.C.R.Nos.20, 21 & 22 of 2004 &
30, 31 & 33 of 2006

COMMON ORDER

Koshy, J.

The question to be decided in R.C.R.Nos.20/04, 21/04 and 22/04 is one and the same. When the respondent in these revisions filed rent control petitions for evicting the tenants, they raised objection denying the title and contended that they can be evicted only through the civil court in view of the second proviso to Section 11(1) of the Kerala Building (Lease and Rent Control) Act, 1965, which reads as follows:

> "Provided further that where the tenant denies the title of the landlord or claims right of permanent tenancy, the Rent Control Court shall decide whether the denial or claim is bona fide and if it records a finding to that effect, the landlord shall be entitled to sue for

> eviction of the tenant in a Civil Court and such Court may pass a decree for eviction on any of the grounds mentioned in this section, notwithstanding that the Court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded."

The Rent Control Court found the plea of denial of title is bona fide. Hence, the rent control petitions were dismissed. The matter went in appeal. The appellate authority found that the dispute is not bona fide. The appellants entered into a tenancy arrangement with the respondent is not disputed. The land, where the petitioner's son's building is situated, was owned by a Trust called Taxi Drivers' Union Trust. The land was entrusted to the respondent for constructing a building on condition that after completion of the building it cannot be alienated, but it can be given on rent for fifteen years. After fifteen years a new document will have to be executed, if it is further given on rent, after deducting 10%

for repairing expenses and payment of tax, out of the balance amount, only 25% can be retained by the respondent and 75% should be given to the land owner. This arrangement is clear from Exhibit A1 produced by the landlord himself. After fifteen years, if no new document is executed and that part of the rent in the ratio fixed is not paid to the land owner, the dispute will be between the land owner and the landlord of the petitioners. But, the fact that the revision petitioners took the building on rent from the land owner is undisputed and they are tenants under the respondent. After fifteen years of completion of construction, if 75% of the rent collected is not given to the land owner, perhaps, there may be dispute between the land owner and the respondent. But, as far as the petitioners are concerned, the respondent is the landlord. Tenant landlord relationship is not disputed. Mere denial of title is not enough to oust the jurisdiction of the Rent Controller. Only if denial of title is bona fide, the Rent

controller can dismiss the petition. The obligation of the petitioners to pay rent as per the lease agreement is to the respondent. Since that is admitted, we agree with the views of the appellate authority and these revisions are liable to be dismissed.

2. During the pendency of the revision petitions, this Court ordered trial can be continued. The Rent Control Court ordered eviction under Section 11(2)(b) of the Act. That was upheld by the appellate authority also. Hence, R.C.R.Nos. 30/06, 31/06 and 33/06 were filed. The fact that the rent is not paid is not disputed.

In these circumstances, there is no merit in these revisions. All the revisions are dismissed.

(J.B.Koshy, Judge)

19th June, 2007

(K.P.Balachandran, Judge)

tkv